



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** McNally Industries, Inc.

**File:** B-241853; B-241854; B-241855

**Date:** February 14, 1991

Stan L. Reed for the protester.  
Thomas M. Hillin, Esq., Defense Logistics Agency, for the agency.  
Stephen Gary, Esq. and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protests that agency improperly awarded contracts for piston housing assemblies to second-low offeror after determining that the protester, the low offeror, was not a qualified source eligible for award, are dismissed as academic; agency's proposed action--suspension of performance of the contracts until they can be resolicited on a more competitive basis or until agency has approved protester's source approval request --is relief that would be appropriate if protest were sustained.

### DECISION

McNally Industries, Inc. protests the award of contracts to S&L Metal Products Corporation under request for quotations (RFQ) Nos. DLA700-90-Q-C411, DLA700-90-Q-C489, and DLA700-90-Q-CB15, issued by the Defense Logistics Agency (DLA) for piston housing assemblies. McNally contends that DLA improperly required it to qualify as a source for the item and that, as the low offeror, it should have received the awards.

We dismiss the protests.

The RFQs called for quotes on aircraft piston housing assemblies, NSN 1650-00-700-1392, to be manufactured in accordance with drawings cited in the solicitations. The RFQs included a "products offered" clause, under which offerors were to indicate whether they were offering the exact product specified or an alternate product, and furnish the data required for the category that was indicated. Of the quotes submitted in response to each solicitation, McNally's was low and S&L's second low. By letter dated August 28, 1990,

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however, DLA advised all offerors of an amendment to the RFQs, namely, a revised item description that specified Sikorsky part number S6165-20595-1 and S&L part number S6165-20595-1 as the only acceptable items. The letter requested quotes, including revised prices, by August 29. By quote of that date, McNally offered its own part number S6165-20595-1. On October 15, DLA awarded the contracts to S&L; on October 25, McNally received written notification from the agency that only approved sources had been considered for the awards, and that the part McNally offered would be evaluated as an alternate product under the products offered clause for future procurements. McNally's protests followed.

McNally objects to the agency's determination that the part it offered requires source approval; the protester states that, since it supplied the part to DLA under earlier contracts, it assumed that it either did not require source approval or would automatically receive it. McNally further asserts that the part is noncritical, and that the agency therefore incorrectly advised it that source approval would be required and erroneously excluded it from consideration for the awards on that basis. In any event, the protester asserts, if the agency had not unduly delayed the source approval process the firm would have been able to compete under these procurements as an approved source. McNally concludes it should receive the awards as the low, acceptable, offeror.

The protests are academic.

The agency explains that the earlier procurements of this item from McNally were based on a competitive item description for which the agency had the necessary drawings. The RFQs at issue here were initially issued on that basis as well, as indicated by the solicitations' references to drawings available from the government. In the course of the procurements, however, DLA realized that it no longer had a complete set of legible drawings. Consequently, it determined that items other than the approved Sikorsky or S&L parts would have to be evaluated as alternate products.<sup>1/</sup> While agreeing with McNally that the item is noncritical, the agency states that this simply means it does not require source approval from the agency's Engineering Support Activity; McNally's offer must still be evaluated by the Technical Services

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<sup>1/</sup> Apparently, this requirement for source approval was made known to McNally prior to its receipt of the August 28 letter. According to the protester, it was advised by the contracting officer for these procurements on June 15, 1990, that the item required source qualification; based on that advice, McNally states that it submitted a source approval request to the agency on June 26.

Division because the firm is not currently an approved source. Further, the agency states that, in an effort to complete source approval for the firm under the products offered clause, it has requested legible drawings from McNally (which the protester asserts that it has); as of early February 1991, however, McNally had not yet furnished them.<sup>2/</sup> DLA states that, nevertheless, stop-work orders that it issued to S&L when the protests were filed will remain in place until it can complete the evaluation of McNally's alternate product offer.

In addition, DLA reports that it is currently developing another fully competitive item description so that the procurement can be restored to a more competitive basis. If, according to the agency, this competitive item description is finalized prior to the evaluation of McNally's alternate offer, the agency will terminate the contracts with S&L and resolicit the requirements under the competitive item description. Similarly, if the agency determines that McNally's alternate product is technically acceptable before the competitive item description is developed, the agency will terminate the contracts with S&L and resolicit the requirements (in which case, the agency notes, McNally would be able to compete on an equal basis).

McNally does not dispute the agency's explanation that source approval is required from DLA's Technical Services Division, nor does it claim that it has received such approval. (The delay in the agency's source approval process, moreover, seems at least partially due to McNally's failure to provide the drawings which it states that it has.) Consequently, even if we sustained the protests, since the amendment to the RFQs explicitly limits competition to approved sources, the remedy that McNally seeks, award of the contracts, would not be appropriate. Rather, the agency's proposed corrective action --to terminate or delay performance of the contracts until McNally obtains source approval or until the procurements can

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<sup>2/</sup> At that time, McNally submitted additional technical data which may or may not be adequate; DLA expects to evaluate it shortly.

be resolicited on a more competitive basis--would be the appropriate relief if we sustained the protest. Under these circumstances, the protests are academic. See Lear Siegler Mgmt. Servs. Corp.--Recon., B-241447.3, Dec. 13, 1990, 90-2 CPD ¶ 487.

The protests are dismissed.



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